

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

TENDERCARE (MICHIGAN), INC. d/b/a
TAYLOR TOTAL LIVING CENTER

and

Cases 7-CA-45810
7-CA-45819
7-CA-46045

LOCAL 79, SERVICE EMPLOYEES
INTERNATIONAL UNION, AFL-CIO

Sarah Pring Karpinen, Esq.,
for the General Counsel.
Daniel Pierce, Esq., (Barkey-Pierce Associates, Inc.),
of Lincoln Park, MI, for the Respondent.

BENCH DECISION

Statement of the Case

KARL H. BUSCHMANN, Administrative Law Judge. This case was tried in Detroit, Michigan on August 25 and 26, 2003, upon a complaint alleging that the Respondent violated Section 8(a)(1) and 8(a)(5) of the National Labor Relations Act, by unilaterally increasing the employees' health insurance premiums and co-pays, and by unilaterally changing the dress code policy, as well as the in-service training policy. Pursuant to Section 102.35(a)(10) of the Board's Rules and Regulations, I issued a Bench Decision finding that the Company violated the Act. This decision, attached as "Appendix", issued on August 26, 2003, sets forth the findings of fact and conclusions of law dealing with relevant contested testimony and other evidence after careful consideration of the contentions of the parties and relevant legal authorities.

I certify the accuracy of the portion of the transcript, as corrected, pages 170-181 entitled Bench Decision, and I attach a copy of that transcript, so corrected, as "Appendix A".

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act, described below in the recommended Order, including posting the notice to employees attached as an appendix.

I hereby issue the following recommended¹

ORDER

5 The Respondent, Tendercare (Michigan), Inc. d/b/a Taylor Total Living Center, 22950 Northline Road, Taylor, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

10 (a) Making unilateral changes in its employees' health insurance premiums without providing the Charging Party adequate notice of the proposed changes and adequate opportunity to bargain about them.

15 (b) Making unilateral changes in its in-service scheduling and training policy, without providing the Charging Party adequate notice of the proposed changes and adequate opportunity to bargain about them.

20 (c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

25 (a) At the Charging Party's request, rescind the changes it made on or about October 1, 2002, by implementing its health insurance proposals unilaterally, and restore the terms and conditions of employment pertaining to the health insurance, which were in effect before it unlawfully changed them.

30 (b) To the extent that any employee was affected adversely because of the changes in health insurance premiums, which the Respondent made unilaterally on about October 1, 2002, the Respondent shall make each such employee whole, with interest, for all losses the employee suffered because of the unlawful changes.

35 (c) At the Charging Party's request, rescind the changes unilaterally made in its In-Service Training policy and restore the terms and conditions of employment pertaining to that policy before it was unlawfully changed.

40 (d) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement. The appropriate unit is:

45 All full-time and regular part-time service employees including competency evaluated nurse aides (CENAs), housekeeping aides, laundry aides, dietary aides, activity aides, and cooks employed by Respondent at its facility located at 22950 Northline, Taylor, Michigan; but excluding all office clerical employees, registered nurses (RNs), licensed practical nurses (LPNs), trainees, confidential employees, guards and supervisors as defined in the Act.

50 ¹If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

5 (e) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

10 (f) Within 14 days after service by the Region, post at its facilities in Taylor, Michigan, copies of the attached notice marked "Appendix B."² Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility
15 involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 1, 2002.

20 (g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Regional Director attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., September 29, 2003.

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Karl H. Buschmann
Administrative Law Judge

50 ² If this Order is enforced by a judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read 'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'

APPENDIX B

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT make changes in the health insurance premiums of our employees in the bargaining unit represented by the Union, Local 79, Service Employees International union, AFL-CIO, without providing the Union adequate notice of the proposed changes and adequate opportunity to bargain about them.

WE WILL NOT make changes in our In-Service Training policy for the employees in the bargaining unit represented by the Union without providing the Union adequate notice of the changes proposed and adequate opportunity to bargain.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, on request, rescind the changes we made by implementing our health insurance proposals unilaterally, and restore the terms and conditions of employment pertaining to health insurance, which were in effect before we unlawfully changed them.

WE WILL, to the extent that any employee was affected adversely because of the changes we made in health insurance premiums, make each such employee whole, with interest, for all losses the employee suffered because of the unlawful changes.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following appropriate bargaining unit:

All full-time and regular part-time service employees including competency evaluated nurse aides (CENAs), housekeeping aides, laundry aides, dietary aides, activity aides, and cooks employed by Respondent at its facility located at 22950 Northline, Taylor, Michigan; but excluding all office clerical employees,

registered nurses (RNs), licensed practical nurses (LPNs), trainees, confidential employees, guards and supervisors as defined in the Act.

TENDERCARE (MICHIGAN), INC. d/b/a
TAYLOR TOTAL LIVING CENTER

(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

477 Michigan Avenue, Federal Building, Room 300, Detroit, MI 48226-2569

(313) 226-3200, Hours: 8:15 a.m. to 4:45 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (313) 226-3244.